Publication Review

Sovereign Debt and Human Rights

Ilias Bantekas and Cephas Lumina (eds)

Reviewed by Dimitrios Kagiaros

The impact of the global sovereign debt crisis has featured prominently in recent academic scholarship. *Sovereign Debt and Human Rights*, a new collection published by Oxford University Press and edited by Ilias Bantekas and Cephas Lumina, provides an insightful and worthy addition to this literature. The 28 contributions offer expert accounts on the links between policies adopted to address sovereign debt and the protection of human rights, with a particular focus on socioeconomic rights. The purpose of this ambitious collection is to address what the authors identify as 'cultural fragmentation'[1] between commercial or investment law and human rights law. Each of these disciplines, according to the editors, can be faulted for being insular, and it is this compartmentalisation of disciplines the book seeks to overcome. The editors illustrate the pressing need for adopting a common framework or a common language which will serve to bridge the gap between these 'opposing camps'.[2] The collection is ultimately successful in achieving this aim and provides a timely addition to the ongoing debate on how states can recover from a debt crisis without undermining human rights.

The analyses provided in the collection rest on underlying arguments that the editors develop in their introduction. Firstly, it is argued that responses to sovereign debt must conform with state obligations to respect, protect and fulfil human rights. Thus, while states must honour their legal duties to repay debts, they must do so in a manner that does not violate '*jus cogens* and fundamental rights'[3] norms. Secondly, the editors distinguish between 'sustainable, transparent and consensual debt'[4] states may incur, and odious debt, namely debt that the editors identify as 'unsustainable',[5] 'illegal'[6] or 'illegitimate'.[7] This distinction is one that authors in the volume have tackled before,[8] and features prominently in this collection as well. If one accepts this rather expansive definition of odious debt,[9] they will find this volume a work of excellent scholarship that is meticulously researched and thoroughly convincing. Finally, the editors argue that in

[1] I. Bantekas and C. Lumina, introduction to the collection at 1.
[2] Ibid.
[3] Ibid at 5.
[4] Ibid at 4.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] See for instance, I. Bantekas and R. Vivien, 'On the Odiousness of Greek Debt' (2016) 22 *European Law Journal* 539-565.
[9] For instance, Jeff King defines the concept more narrowly and with a higher threshold. According to King, a 'subjugation debt', the category of odious debt most closely related to the conception the authors address in the collection, is a debt that is 'made for the purpose of facilitating the violation of jus cogens norms, or the commission of serious or flagrant violations of human rights, humanitarian law, or other fundamental international law principles in respect of the population of the debtor state'. See J. King, *The doctrine of odious debt in international law: a restatement* (Cambridge University Press, 2016) 5.

order to fully understand the mechanics of sovereign debt and its relation to human rights, any analysis must draw from expertise across various fields of study. With this in mind, the editors have invited contributions from lawyers, historians, and social scientists among others.

The chapters in the edited volume are written with clarity, thus achieving what the collection sets out to do, namely, to explain in a straightforward and succinct manner the human rights issues to which responses to sovereign debt give rise. For this reason, the collection is accessible to all readers with an interest in sovereign debt, regardless of their familiarity with human rights law or other disciplines.

The structure the book follows is conducive to advancing the central arguments that form the basis for the collection. The three chapters in the first section examine the historical, economic, and political context of sovereign debt while also highlighting the relationship between property or creditor rights and human rights. These chapters artfully set the stage for the discussion and provide valuable context for the sections that follow. The second section tackles the 'institutions and modalities' engaged with sovereign debt financing. The chapters examine the role of private loans, export credit agencies, the failings (and possible utility) of credit rating agencies, and the potentially adverse impact of international investment arbitration on socioeconomic rights.

The third and fourth sections delve into the human rights dimension of sovereign debt in greater depth. The third section thoroughly examines how sovereign debt impacts human rights and includes an excellent analysis of the impact on the right to food, as well as invaluable commentary on how the rights to education, self-determination, the right to development, and the right to health are oftentimes sacrificed to service the debt. This section does not neglect to address the link between sovereign debt and the deterioration of labour standards, while insightful analysis is also provided on the impact to civil and political rights, particularly where states' positive obligations are concerned. The fourth section explores economic adjustment policies and advances convincing critiques in chapters covering the ethics of lending to states, the human rights implications of conditionality, the structural responses to austerity and debt in the context of the Committee on Economic, Social and Cultural Rights, and the means to properly assess the human rights impact of economic reforms.

Any critique of the effect of sovereign debt on human rights would be incomplete without careful consideration of (and concrete proposals regarding) how we can respond to a sovereign debt crisis in a manner that is compatible with the state's human rights obligations. The final section on human rights-based responses to debt crises aims to contribute to this discussion. The authors provide thoughtful recommendations and innovative approaches in their chapters. Ideas such as a future 'multinational statutory framework for debt resolution'[10] based on the United Nation's Basic Principles on Sovereign Debt Restructuring Processes,[11] a sovereign debt arbitral mechanism, citizen debt audits, limits to vulture fund litigation, and a greater role for Domestic Resource

[10] M. Guzman and J. Stiglitz in chapter 23 of this collection at 448.
[11] These principles according to the authors can be derived from UN GA Resolution 68/304, September 2014 and UN GA Resolution 69/319, September 2015.

Mobilisation are explored and assessed as to their efficacy to deliver human rights friendly approaches to debt. Additionally, two chapters in this section examine the important dimension of odious debt. The first makes some intriguing points by arguing that debt amassed in a manner that contravenes the 'democratic ideal' is odious, particularly in instances where the debt was contracted by a 'non-representative government […] and served the purpose of that government in denying the political freedom of the people'.[12] The second provides an insightful analysis of how the odious nature of a debt can potentially lead to its unilateral denunciation on the basis that it violates human rights.[13]

The overall critique the collection advances in relation to existing means of addressing debt crises is twofold. Not only do these measures endanger the effective enjoyment of rights, but additionally, they are ineffectual in that they may exacerbate the financial instability of the states involved, rather than provide a solution. In communicating this message, the collection mostly avoids the pitfall of adopting a 'preaching to the choir' approach in its analysis. Perhaps more could have been done to address potential objections from the inevitable sceptics, especially since the aim of the collection is to contribute to the cross-fertilisation of disciplines and by extension the political and economic principles that underpin them. This, however, is a minor point that does not seriously detract from the rich analysis by world-leading experts on an issue of great timeliness and importance. While some may be too quick to discard some arguments as an example of 'human rightism',[14] scholars with a genuine interest in sovereign debt will appreciate a collection that provides a robust and impassioned critique of the demonstrable failure of recent responses to sovereign debt. In this respect, the edited collection serves as a vital addition to an ongoing debate of great importance.

[12] M. E. Salomon and R. Howse in chapter 22 of this collection at 425.
[13] I. Bantekas in Chapter 28 of this collection.
[14] A. Pellet, 'Human rightism and international law', Gilberto Amado Memorial Lecture delivered on 18 July 2000 available at http://pellet.actu.com/wp-content/uploads/2016/02/PELLET-2000-Human-rightism-and-international-law-G.-Amado.pdf .